



**Responsa**

**Access of People with Guide  
Dogs to the Western  
Wall Prayer Plaza**

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**Rabbi Dr. Benjamin Lau**

# **Access of People with Guide Dogs to the Western Wall Prayer Plaza**

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## **Background: The Tension between Religious Rulings and Israeli Legislation**

In December 2012, sixty blind individuals with guide dogs came to Jerusalem for a tour of the Old City. The director of the Lander School of Tourism wrote an article describing the experiences of this group and their tour guides.<sup>1</sup> It describes the light that surrounded the members of this group, who live in eternal darkness. Their encounter with the stones of the Jewish Quarter, the Burnt House, and the Western Wall Tunnels brought tears to the eyes of everyone present. While the article describes their joy, it spares us one painful issue. These people were not able to visit the place of prayer that has been sanctified by the tears of thousands of Jews over thousands of years. This was because according to the directives of the Rabbi of the Western Wall, entry to the Kotel plaza is forbidden to any type of animal, including guide dogs.<sup>2</sup>

This directive seems to contradict two Knesset laws. Twenty years ago, the Knesset passed a law that required equal access for people with guide dogs (the Law Prohibiting Discrimination against Blind People Assisted by Guide Dogs, 5753–1993). According to section 3(a) of that law, “the right of a blind person to enter a public place and use all of its facilities shall not be limited due to that individual’s accompaniment by a guide dog.” No exceptions or specific regulations that would exclude any location were included in this legislation. In 1998, the Equal Rights for People with Disabilities Law 5758–1998 was passed by the Knesset. This law underwent a series of amendments and was completed in its current format in 2005.<sup>3</sup>

As defined in section 2 of the law, the purpose of the Equal Rights Law is “to protect the dignity and freedom of a person with a disability, to enshrine her/his right to equal

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<sup>1</sup> Ami Meitav, “Light in Jerusalem: For Blind People with Guide Dogs Too,” Moreshet website, December 4, 2012 <http://www.moreshet.co.il/web/family/news/news1.asp?x=57774> [Hebrew].

<sup>2</sup> The directives were submitted by Rabbi Shmuel Rabinowitz, the Rabbi of the Western Wall, to the Interior Ministry’s Equal Rights Commission for Persons with Disabilities on February 26, 2009. See also: Rabbi Shmuel Rabinowitz, “Bringing a Guide Dog into the Western Wall Plaza,” *Tehumin* 29 (2011): 487 ff. [Hebrew].

<sup>3</sup> Regarding the implications of this law for the social profile of the State of Israel and the development of its sense of environmental justice, see Dina Feldman, “The Contribution of the Equal Rights for People with Disabilities Law – 1998,” in *Accessibility of Israeli Society to People with Disabilities at the Start of the 21<sup>st</sup> Century*, eds. Dina Feldman, Yael Danieli-Lehav, and Shmuel Haimovitch (Jerusalem: Ministry of Justice, 2007), 31–81 [Hebrew].

and active participation in society in all the major spheres of life, and, furthermore, to provide an appropriate response to the special needs of a person with a disability, **in such a way as to enable her/him to live with maximum independence** in privacy and in dignity, realizing her/his potential to the full.” The implications of this statement are that all solutions should aim to enable people with disabilities to function independently. In this context, guide dogs serve as the eyes of people with visual disabilities.

Section 19 (b) of the law states that “a person with a disability has the right to access public places and public services.”<sup>4</sup> The law defines a “public place” (Appendix 1), and section 12 of this elaboration explicitly states that a “public place” includes “**a place of worship, ritual bath, or any other place that provides religious services.**” According to this definition, every place of worship (and the Western Wall is a place of worship) is bound by the requirements related to accessibility that are set out in the Equal Rights Law. Included in these requirements is the obligation to provide access and services to people with disabilities in an egalitarian manner and in accordance with their needs.

Despite what is written in section 19, the Equal Rights Law includes an exception [section 19 (f) 3 (c)], which states that “**this section will not consider an act to be discrimination in a case where the character or essence of the public place or public service is at stake.**” In other words, if it can be proven that forbidding the admission of guide dogs to the Western Wall plaza or to a synagogue is necessary in order to maintain the character or essence of those places, barring dogs admission to those places does not constitute discrimination. The purpose of this article is to explore this issue and to examine the essential matter that forbids the admittance of guide dogs to the Western Wall and exempts this exclusion from being considered discrimination.<sup>5</sup>

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<sup>4</sup> Despite this legislation, there are still many public places and services that prevent the entry of people with guide dogs (including restaurants and taxis). The Commission for Equal Rights for People with Disabilities in the Ministry of Justice is working diligently on bringing about the enforcement of the law as it is written and the situation has improved greatly over the years. It should be emphasized that this article is not addressing the problem of accessibility to the Western Wall in general but the discrimination that stems from the halakhic ruling that forbids entry of guide dogs to the prayer area of the Western Wall plaza. I would like to thank Attorney Tova Recanati and Attorney Yisrael Haber of the Justice Ministry’s Commission for Equal Rights for People with Disabilities for their assistance in enabling me to understand the legal context.

<sup>5</sup> It may be argued that the older law, the Law Forbidding Discrimination against the Blind (1993), does not contain any restrictions, and the force of that law, which deals specifically with the blind, is greater than the force of the more recent Accessibility Law, which contains a restriction. I am not sure, however, that this interpretation is correct.

## **The Disagreement between Rabbi Moshe Feinstein and Rabbi Yaakov Breisch on Guide Dogs in the Synagogue**

The first scholar to deal with the issue of guide dogs in places of worship at length was Rabbi Moshe Feinstein, author of the collection of responsa *Iggerot Moshe* (United States, mid-20<sup>th</sup> century). In a unique responsum, in which he sought precedent from the period of the Temple and the Talmudic Sages for allowing animals into places of worship, Rabbi Feinstein allowed the admittance of a guide dog into the synagogue. His responsum states that his ruling is more easily applied in the Diaspora than in Israel, since the sacred status of synagogues in the Diaspora is considered temporary and conditional,<sup>6</sup> but his attention to the needs of the person with the disability who loses his or her independence without a guide dog is very evident. This can be seen from the following statement:

For there is no better example of a situation of urgent need than this case, for if we do not allow this, the person will forever be excluded from communal prayer and from the public reading of the Torah and the Scroll of Esther, and there are also days on which his sorrow would be very great, such as the High Holidays and similar days when the community gathers together. This is great proof that we should allow a blind person whose guide dog must accompany him at all times to enter the synagogue to pray and listen to the Torah reading and the like.

*Iggerot Moshe, Orah Haim, Part One, Chapter 45*

(Note that all of the quotes from Rabbi Feinstein that follow are from this responsum.)

Rabbi Feinstein raised the question of whether admitting a guide dog in the service of a blind person should be considered to be a religious transgression, since the dog is not being admitted as a statement of disrespect or expression of frivolity, but rather is being admitted to serve the needs of a worshipper.

In the end, Rabbi Feinstein recommended that the person who is being assisted by the dog sit near the doorway (inside the building) in order not to confuse the worshippers.

Rabbi Feinstein's responsum elicited a response from Rabbi Yaakov Breisch, rabbi of the ultra-Orthodox community in Zurich. Rabbi Breisch ruled that Rabbi Feinstein's sources do not provide a sufficient basis for such a flimsy structure. After dismissing the halakhic sources, Rabbi Breisch described the desecration that could potentially result from admitting dogs to the synagogue, referring to a source cited by Rabbi Feinstein concerning the admission of a donkey to a synagogue:

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<sup>6</sup> According to Jewish tradition, in the future, all synagogues in the Diaspora will be uprooted from their locations and relocated permanently to the Land of Israel.

Who is to guarantee that the donkey will not defecate in the midst of prayers . . . when children play with it, and the dog will begin barking; aside from the dishonor and levity that will be involved, there is also the concern that a woman may miscarry [out of fear].

Responsa *Helkat Yaakov, Orah Haim*, Chapter 34

(Note that all of the quotes from Rabbi Breisch that follow are from this responsum.)

Rabbi Breisch saw this ruling as involving a dangerous “slippery slope,” as he stated explicitly:

In addition, and this is the main reason in my view. . . due to our many sins, which have led to such a weakening of Judaism, especially in these countries, if we open an opening the size of the eye of a needle, it will open a door as wide as the entrance to the Temple, and some ‘rabbi’ will be found who will permit this, who will claim that he is relying on a great scholar, and will say that it has already been permitted to let a dog into the synagogue in cases of urgent need, and he, as a ‘rabbi,’ will determine on his own what is considered an urgent matter, and, heaven forbid, it may result in a great desecration of God’s name, since the Christians forbid the entrance of dogs to their places of worship, in contrast to the synagogue, where it would be permitted.

The solution that Rabbi Breisch offered to a person who relies on a guide dog is to rely on people for help, as is usually done.

It is hard to believe that he will not be able to find a solution, such as that someone will accompany him to the synagogue, at least on special occasions. And if there indeed is no other solution, he is considered to be under duress, and the Torah accordingly exempts him from the obligation of attending synagogue. And the main point for me is that in any event, on special occasions, the person will obviously be able to find someone to take him to the synagogue, and this should not be a reason to permit bringing a dog into the synagogue. A supporting verse for this is: ‘you shall not bring . . . the price of a dog into the House of the Lord your God . . . for it is abhorrent to the Lord your God’ (Deuteronomy 23:19).<sup>7</sup>

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<sup>7</sup> See Aviad HaCohen, “Accessibility for the Blind,” Parshat Ki Tavo, *Parshat Hashavua Sheets* (Ministry of Justice, 2006), 264 [Hebrew], where he summarizes and evaluates the approach to ruling of the two authorities mentioned above. For more on this disagreement, see Racheli Shulshtain, “Integration of People with Disabilities in Society According to Jewish Law,” *Parliament* 74 (2012), Israel Democracy Institute website <http://tinyurl.com/bnuwewp> [Hebrew].

This disagreement is the basis of all the positions of halakhic authorities and responsa authors in the past decade. In order to understand the essence of the difference of opinion, I will divide the discussion into three sections:

1. The blind person's personal need for the guide dog vs. the community's need to preserve its way of life
2. The halakhic sources that serve as the basis of Rabbi Feinstein's ruling and Rabbi Breisch's criticism of those sources
3. The approach to halakhic decision making of the two authorities.

## **1. The Fundamental Dispute over the Blind Person's Need for the Dog**

The question about guide dogs was referred to Rabbi Feinstein by Rabbi Pinchas Mordechai Teitz, who was the rabbi of the Orthodox community in Elizabeth, New Jersey at the time. Rabbi Teitz was a community rabbi in the 1940s and 1950s, who sought to increase the number of members in his small Orthodox community and therefore wished to find a halakhic way to accommodate a blind person in the synagogue. In this context, he turned to Rabbi Feinstein with this question in 1953, some twenty years after guide dogs were introduced worldwide.<sup>8</sup> Rabbi Teitz's question put pressure on Rabbi Feinstein, since its introduction said that "the dog **must** enter with him." Rabbi Feinstein (like Rabbi Teitz) knew that there are good people everywhere who would be happy to help the blind man, but despite this, the wording of the question implies that the man would not enter the synagogue unless accompanied by his dog. This was a new social reality and the Rabbi did not take exception to it. The blind person's need for independence was a given in this case, such that there were only two options: the blind man could either enter with his dog or he could refrain from entering the synagogue completely. It is understandable that Rabbi Breisch objected to this point of departure. In his opinion, the expectation that there would be help from others undermines the premise of the entire question, as he says:

It is hard to believe that he will not be able to find a solution, such as that someone will accompany him to the synagogue, at least on special occasions. And if there is indeed no other solution, he is considered to be under duress, and the Torah accordingly exempts him from the obligation of attending synagogue.

The disagreement between these two halakhic authorities, therefore, stems from their understanding of the reality. Rabbi Feinstein was focused entirely on the person who sought to be admitted with his dog, while Rabbi Breisch's understanding was that the blind man's dependence on his dog was not absolutely necessary.

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<sup>8</sup> For more on Rabbi Teitz and his achievements, see Rivkah Teitz-Blau, *Learn Torah, Live Torah, Love Torah: HaRav Mordechai Pinchas Teitz, the Quintessential Rabbi* (Jersey City, NJ: Ktav Publishing House, 2001).

## 2. The Dispute over the Interpretation of the Sources Cited by Rabbi Feinstein

The primary source on which Rabbi Feinstein's ruling rests is a text from the Palestinian Talmud in which Rabbi Imi instructs the supervisors of the study hall:

If anyone comes to you with a bit of Torah, accept him and his donkey and his tools. (Megillah 3, 5)

Rabbi Feinstein explains this passage according to a teaching presented there in the name of Rabbi Joshua ben Levi, which states that synagogues and study halls are considered to be like the home of the sages and their disciples. (A similar statement attributed to the sage Rava appears in the Babylonian Talmud Megillah 28.) Based on this, Rabbi Imi told the supervisor that even a person who has just a bit of Torah knowledge should be considered to be a member of the household of the synagogue, and as such, may enter the synagogue with his donkey and tools. Rabbi Feinstein deduces from this that “bringing a donkey into the synagogue is not considered any more frivolous or disrespectful than eating or drinking or sleeping [in the synagogue].” He found that the Magen Avraham and the Gaon of Vilna also mention this source from the Palestinian Talmud in their rulings “and as such—we rule thus.” This ruling relies on sources that do not make up the traditional path of halakhic decision making, as rulings usually rely on the Babylonian Talmud, the writings of Maimonides, and the *Shulhan Arukh*. In this case, however, Rabbi Feinstein relied on the Palestinian Talmud and two later rabbinic authorities who cited it.

Rabbi Breisch claimed that the use of this source to address the issue at hand is anomalous. Moreover, in his opinion, Rabbi Feinstein's reading and interpretation of the source deviates blatantly from its simple meaning. He cites several weak links in Rabbi Feinstein's interpretation of the source:

- a. The Palestinian Talmud was discussing a study hall—a place dedicated to study—not a synagogue, which is specifically designated for prayer.
- b. The Palestinian Talmud did not relate to times of prayer. Obviously, bringing an animal into the synagogue during times of prayer will be a distraction to those praying: “A donkey or dog in the middle of a synagogue or study hall will certainly lead to joking and lightheadedness, and the children will play with them, and there is nothing more frivolous than that in the middle of prayers.”

To these simple comments, Rabbi Breisch added two additional reservations, which seem less convincing:

- c. The Palestinian Talmud may have meant the person who guides the donkey (*chamar* in Hebrew), rather than the donkey itself (*chamor* in Hebrew).
- d. Even if the Palestinian Talmud is indeed referring to an actual donkey, a dog is worse, as a dog is considered an abomination in the eyes of the Lord. (This idea will be discussed further on in this article.)

A simple reading of the source from the Palestinian Talmud seems to indicate that Rabbi Breisch is correct. It is very difficult to infer from Rabbi Imi's teaching that donkeys were actually permitted in places of worship during times of prayer. It is far more likely that his teaching was only intended as a directive concerning the provision of proper hospitality for guests, which should include bringing the donkey into the barn, storing the tools in the storeroom, and bringing the guest himself to the study hall. The simple reading of the sources thus invalidates one of Rabbi Feinstein's proofs, and the case that he built collapses for lack of solid foundations.

### **3. The Approaches to Halakhic Decision Making**

An analysis of the arguments of the two rabbis reveals that Rabbi Breisch is combating the weakening of religious authority, and is therefore unwilling to see the need of the blind person. He argues that a reasonable solution will be found within the prayer community, and therefore there is no need to harm the tradition of sanctity of synagogues. In his words:

Walking with dogs alongside is not in line with true Jewish feelings;  
only haughty people do this.

Rabbi Feinstein wishes to define praying in synagogue as an "urgent need" and ignores the blind person's ability to receive help from others in order to attend prayers. He does not consider the possibility that the blind person will not come to the synagogue on his own, without being escorted by another person, since personal liberty, freedom of choice, and decision making are central to the modern definition of human identity.

I have no doubt that this is the core of the disagreement between these two authorities. The social reality in the United States at the time made it necessary for Rabbi Feinstein to make an effort to ensure the person's right to exercise his freedom independently, without being dependent on society, while Rabbi Breisch's community of Zurich in the 1950s and 1960s, had not yet experienced this social reality. As a result, from Rabbi Breisch's perspective, it would be disrespectful to allow an unclean animal to enter a synagogue, especially since this was absolutely forbidden in all Christian holy sites at the time; Rabbi Feinstein, in contrast, allowed the blind person to enter with a guide dog and was entirely confident that this would not constitute disrespect or frivolity in a place of worship. Rabbi Breisch was concerned about the

slippery slope that was involved in this ruling, since in his view, the very presence of a person with a dog is foreign to the Jewish way of life. This is a very familiar position, but it ignores the innovation of having guide dogs serve as the eyes of a person with a disability.

## **Additional Halakhic Positions in Recent Decades**

### **1. The Dispute over the Rumored Ruling of Rabbi Joseph B. Soloveitchik**

Two conflicting sources cite oral rulings by Rabbi J. B. Soloveitchik on the issue of admission of guide dogs to synagogues. The first source appears in the book *Mipninei Harav* by Rabbi Tzvi (Hershel) Schacter, who relates:

Once, a blind man paid for a seat in the synagogue for the High Holidays, and when he came to the synagogue on Rosh Hashanah, he brought with him the dog that always accompanied him and helped him walk in the street, and brought it into the synagogue. The congregants were angry with him and warned him not to come into the synagogue with the dog, but he insisted and brought it in. In their desire to prevent the blind man forcibly from entering with the dog, they pushed him and he fell on the ground and was injured. He filed a lawsuit against the congregants of the synagogue in the secular court, suing them for damages. The judge ruled that the matter of damages had to be decided based on Jewish law: if Jewish law would permit the man to bring his dog inside, the congregants are liable for damages, but if Jewish law prohibits bringing the dog into the synagogue, the congregants would be exempt. The judge asked our rabbi [Rabbi Soloveitchik] for his opinion on this halakhic matter, and our rabbi told us, when we were studying the section on the sanctity of the Temple in the first chapter of tractate Yevamot, **that he had responded that in his opinion, it was forbidden to allow the dog into the synagogue.** (46b)<sup>9</sup>

In contrast to this oral tradition, Rabbi Soloveitchik's son-in-law, my master and teacher Rabbi Aharon Lichtenstein, said in a class at the Har Etzion Yeshiva that Rabbi Soloveitchik permitted the entrance of guide dogs based a source in the Talmud:

Rather, Rava said . . . the synagogue is like one's house. Just as a person objects to a person using his house as a shortcut, but does not mind if the person wears shoes or spits in the house, so too in the case of a synagogue, using it as a shortcut is prohibited, while spitting and wearing shoes are permitted. (Berakhot 63a)

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<sup>9</sup> Rabbi Tzvi (Hershel) Schacter, *Mipninei Harav*, [Pearls of Wisdom from Our Master, Rabbi Joseph B. Soloveitchik, of Blessed Memory] (Jerusalem 2011) [Hebrew].

Rava compares the manner of a person's conduct at home to the conduct befitting a synagogue. According to Rabbi Lichtenstein, Rabbi Soloveitchik's new interpretation is that Rava's statement asserts that although a synagogue is considered to be a "minor temple," it is essentially different from the actual Temple. In the Temple, a person is a guest in God's house; in a synagogue, in contrast, God is a guest in a person's house. Therefore, what is considered to be appropriate behavior in a synagogue is derived from the conduct a person would tolerate from a guest in his home. What emerges from the Talmudic source is that because people were not concerned about spitting in private homes or entering with shoes, such actions were not prohibited in the synagogue either.

According to Rabbi Lichtenstein's account, Rabbi Soloveitchik relied on this statement by Rava and determined that the norms permitted in synagogue are measured by the rules of propriety accepted in the home. Accordingly, since it is obvious that a person would allow a blind person to enter his home with a guide dog, such a person should also be allowed into the synagogue with a guide dog, and this would not constitute a desecration of the sanctity of the place.

## **2. Rabbi Ovadia Yosef's Ruling**

While Rabbi Ovadia Yosef did not write any rulings concerning guide dogs himself (this has been verified to the best of my ability), two rulings have been issued by members of his family that describe his position on the matter.

The first was written by his son, Rabbi Yitzhak Yosef, who devoted a paragraph to this issue in his series *Yalkut Yosef*:

A blind person who is accustomed to walking with a guide dog that takes him and leads him from place to place, may not bring the dog into the synagogue with him, especially during prayers or study, unless there is a particular synagogue that he is accustomed to attend, in which case a post should be designated outside the synagogue (some distance from the entrance) so that he can tie the dog to it before he enters the synagogue. (Chapter 151 [Laws of Sanctity of the Synagogue], section 25)

This paragraph is very difficult to comprehend. Initially, it forbids bringing the dog into the synagogue, but it then includes an exception ("unless there is") that may imply a case where entry should be permitted. However, the section later reads: "a post should be designated outside the synagogue," which brings us back to prohibiting the dog's entrance. What, then, was the intention of the author in saying "unless there is a particular synagogue that he is accustomed to attend"?

In an explanatory note included there, Rabbi Yitzhak Yosef explains his reservations about Rabbi Moshe Feinstein's ruling. In addition to Rabbi Breisch's criticisms of the proof from the Palestinian Talmud, Rabbi Yitzhak Yosef cites the prohibition "do not

desecrate my Temple,” which obligates synagogues to require rules of public conduct that are customary in non-Jewish places of worship (based on a ruling of the Hatam Sofer and other rulings). Nowhere in this note does Rabbi Yosef explain his statement “unless there is a particular synagogue that he is accustomed to attend.” My understanding is that his intention was that in a place that a blind person frequents regularly with a guide dog, where his entrance does not cause excitement or distraction, it is possible to rely on Rabbi Feinstein’s ruling.<sup>10</sup>

The second ruling issued from Rabbi Ovadia Yosef’s study hall was published by his grandson, Rabbi Yaakov Sasson, on the Halakha Yomit (Daily Halakha) website he manages. This site, which publicizes rulings by Rabbi Ovadia Yosef that have been edited by Rabbi Sasson, presents an interesting, complex position: after quoting Rabbi Feinstein’s ruling and Rabbi Breisch’s reservations, Rabbi Sasson, quoting his grandfather, provides a third view, which reasons that the *Shulhan Arukh* would forbid the admission of the dog to the synagogue during prayers, and would allow it only during times of Torah study. The reasoning for this:

Since according to our master, the author of the *Shulhan Arukh*, one may only be lenient regarding eating and drinking in cases of people who study Torah in the study hall; however, for those who only pray in the synagogue, this leniency should not be applied. Accordingly, even if one is to rule leniently and allow the dog to enter to serve its blind master, this would only apply for the purpose of Torah classes and the like, where there is room for leniency. But if the person only comes there for prayers, it seems that this should not be permitted. Therefore, it appears that the law should be as follows: If it is possible for the blind person to avoid bringing the dog inside the synagogue and to leave it outside, this is preferable, and another one of the worshippers should lead him to his seat in the synagogue. But if there is no other way, and the blind person must bring the dog into the synagogue, he may rely on the ruling of our sage Rabbi Moshe Feinstein in this matter, for there is room to say that even according to our master the author of the *Shulhan Arukh* one may be lenient in this regard, and especially since there are those who say that in this case, the custom does not follow the *Shulhan Arukh*.<sup>11</sup>

After this reservation (which includes permission to follow Rabbi Feinstein’s ruling), Rabbi Sasson introduces an additional reservation that stems from cultural matters that influence the sanctity of the synagogue and the prayer environment:

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<sup>10</sup> Rabbi Yitzhak Yosef confirmed my interpretation of his ruling to me directly. In his words, “I agree with everything you wrote, that in such a case Rabbi Feinstein’s ruling may be relied upon, as long as the dog is in a corner and not in a prominent place and everyone is used to its presence, and it is done in a manner in which there is no concern that there will be fear” (SMS, February 4, 2013).

<sup>11</sup>“Dogs in a Synagogue,” Halakha Yomit (Daily Halakha) website, August 27, 2008 at <http://www.halachayomit.co.il/DisplayRead.asp?readID=640> [Hebrew].

All of this applies specifically to a place where the congregation is accustomed to dogs, such that the dog's presence does not cause a disturbance during the services. But in places where it is not very customary to raise a dog, such as in ultra-Orthodox neighborhoods and the like, there is concern that it would be somewhat disrespectful to bring the dog into the study hall, especially since there is concern that the dog will cause children in the synagogue to be afraid since they are not used to being around dogs, and this could disrupt the worshipper's ability to pray with intent. Therefore, in such circumstances, it is appropriate for the blind person to leave the dog at the entrance to the synagogue, and one of the congregants should help him inside, and after services he can return to take his dog home. In a place where this is not possible, one should make sure that the dog stays in a place where it will not disturb the other congregants, such as in one of the corners of the synagogue, so that the blind person can stay in the synagogue, in order to pray and study Torah.

In his summary, Rabbi Sasson warns against excessive reliance on Rabbi Feinstein's permissive ruling and ends by citing the stringent ruling of Rabbi Amar that will be discussed below.

### **3. The Ruling of Rabbi Shlomo Amar, Sephardic Chief Rabbi of Israel**

Against the backdrop of Rabbi Soloveitchik's innovative interpretation, which draws a parallel between home and synagogue, it is appropriate to consider the staunch position of Chief Rabbi Shlomo Amar, in his book *Shema Shlomo*:

We should not learn from this that it is permitted to admit a dog, which has eternally been considered a despicable animal that should not be allowed in one's home, but should rather live outside it. A hint to this can be found in the verse 'you must not eat flesh torn by beasts in the field; you shall cast it to the dogs.' [Exodus 22:30] In our day as well, when nature has changed so much that dogs have become pets for amusement and for walks more than they are used as guard dogs, in any case, they are highly uncommon in the observant community. . . . And although this dog is important to its owner, as it guides him wherever he desires to go and serves as his eyes, to all others the dog is a dog like all other dogs, and any person who sees a dog being allowed into the synagogue will see it as a sign of disrespect and a violation of a holy place. (Part 4, Chapter 3)

Rabbi Amar distinguishes between people who are "Torah observant" and "all others." People who are Torah observant see the dog as a despised creature that belongs outside the home. In this sense, the norm that Rabbi Soloveitchik cites in his new interpretation of the source in the tractate Berakhot is the very same

consideration that determines Rabbi Amar's view, who argues that just as a guide dog should not be in a person's home, how much more so it does not belong in a synagogue!

#### **4. Halakhic Rulings on the Internet**

An internet search reveals rabbis who have responded to this question, almost always based on the disagreement between Rabbi Breisch and Rabbi Feinstein. For example, Rabbi Eliezer Melamed, the rabbi of the Har Beracha settlement, quotes Rabbi Feinstein's ruling and Rabbi Breisch's reservations on his website Peninei Halakha, and concludes:

Therefore, it is befitting that the sextons install a post outside the synagogue to which the blind person can tie the dog. (In his footnote, he refers to the book *She'arim Metzuyanim Behalakha*, 13:2 and *Yalkut Yosef*, Chapter 151, section 25.)<sup>12</sup>

Rabbi Yaakov Ariel, Chief Rabbi of Ramat Gan and president of the Tzohar rabbinic organization, was asked about this issue. His response is phrased in a manner that allows the sextons of the synagogue or the congregants to use their discretion:

The recommended solution is that the dog's owner should sit near the exit with the dog near him, either outside or near the door.<sup>13</sup>

#### **5. The Ruling of the Rabbi of the Kotel, Rabbi Shmuel Rabinowitz**

In 2009, in response to a request from people with guide dogs who wished to enter the Western Wall prayer plaza along with their dogs, the Rabbi of the Western Wall, Rabbi Shmuel Rabinowitz, wrote a letter to the Commissioner for Equal Rights for People with Disabilities, in which he explained the ban on guide dogs in the prayer plaza.<sup>14</sup> He began with a definition of the sanctity of the Western Wall plaza which has an additional level of sanctity beyond the sanctity of a synagogue, as stated in the Midrash: "The Divine Presence shall never leave the Western Wall."<sup>15</sup>

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<sup>12</sup> Rabbi Eliezer Melamed, "May a Guide Dog be Brought into a Synagogue?" Peninei Halakha website at <http://ph.yhb.org.il/07-06-10/> [Hebrew].

<sup>13</sup> Rabbi Yaakov Ariel, "Raising a Guide Dog – Entering a Synagogue," Yeshiva website, January 17, 2012, at <http://www.yeshiva.org.il/ask/?id=70682>. According to his responsum, the sexton may exercise his discretion whether to leave the dog outside (near the doorway). This is a strict expansion of Rabbi Feinstein's ruling. Prof. Avraham Steinberg presented a similar position in his article "On the Blind Person in Halakha," *Tehumin* 3 (1982): 224 section 2 [Hebrew].

<sup>14</sup> See above n. 2.

<sup>15</sup> Rabbi Rabinowitz discussed this at length in *Responso Sha'arei Zion*, Be'er Avraham Institute 2006, chapter 1.

In the section that follows, we will examine Rabbi Rabinowitz's reasons for banning guide dogs from the synagogue and will check their validity. (The quotes from Rabbi Rabinowitz are taken from the above mentioned letter.)

- **Claim 1: A logical derivation from cultural behavior in non-holy places** – In his discussion of the proper rules of conduct in a synagogue, Rabbi Rabinowitz writes that the accepted behaviors in a holy place should be derived logically from the rules of conduct in non-holy places:

Since today, in every place that is treated with respect the entrance of animals is absolutely forbidden (as even non-holy places such as courts of law, museums, and the like, as well as churches of non-Jews categorically forbid the entrance of animals), how much more so the admission of animals be categorically prohibited in a synagogue.

This argument cannot be accepted as a halakhic ruling given today's social reality. Not only is it **not** appropriate, but the opposite is true. All public places are required by law to admit blind people with guide dogs. Moreover, in recent years, the enforcement of this law has increased, and cultural institutions take pride in being accessible to all. The logical derivation Rabbi Rabinowitz is suggesting should actually be reversed, and should say: "shall a priestess not receive the respect of an innkeeper?" If all public places are respectful of human dignity, independence, and freedom, how much more so that human dignity and freedom should be maintained when a person is standing before God in a synagogue. Should the Torah of the Jewish people be less concerned with the needs of people than the teachings of secular society?

- **Claim 2: A comparison with the exclusion of dogs from Christian and Muslim holy places** – Rabbi Rabinowitz's second argument is that holy sites around the world forbid the entry of animals, and if we permit something that the gentiles forbid, it will bring about a desecration of God's name. His source for this ruling is a ruling by the Hatam Sofer (Austro-Hungarian Empire, early 19<sup>th</sup> century), which is cited by Rabbi Shlomo Zalman Bervin in the book *She'arim Metzuyanim Behalakha*:

As it is written: "You shall fear my place of worship." See the Responsa of the Hatam Sofer (*Orah Haim*, Chapter 31), who writes that if the gentiles are careful to uphold the honor of their place of worship in a certain way and we do not, it will be a desecration of God's name. (Chapter 13, section b)

This ruling regarding a guide dog was previously cited by Rabbi Moshe Steinberg, rabbi of Kiryat Yam (*Sha'arei Moshe*, Chapter 151a) and by Rabbi Yitzhak Yosef in the above mentioned book, *Yalkut Yosef*. In Christian and Muslim houses of worship the reality is inconsistent, and it is difficult to identify clear-cut positions on this matter. For example, the Muslim Law Council (Sharia) in England issued a fatwa (religious ruling) enabling Mahomed-Abraar Khatri, 18, to be assisted by his Labrador, Vargo, in order to access the mosque in his city of Leicester, about 160 kilometers north of London. Islam is very stringent with regard to unclean animals, including dogs, so this religious ruling—a fatwa that sets a binding religious legal precedent—is considered a breakthrough toward the understanding that the entry of a guide dog should not be viewed as contaminating a holy site.<sup>16</sup>

The policies of Christian churches are likewise inconsistent and somewhat unclear. There are many accounts on websites around the world of religious leaders admitting guide dogs to their churches.<sup>17</sup> It is my understanding that with regard to holy sites in Israel, there is no set policy. Rev. David M. Neuhaus, Vicar for the Hebrew-speaking Catholics of the Latin Patriarchate in Jerusalem, examined the policies of churches in Israel for me and confirmed that there is no religious-legal reason that a dog should not enter a church with a visually challenged person during prayers or for a visit. The Catholic priest at Saint Peter's Church in Jaffa even told me that a group of blind pilgrims from Germany recently visited the church with their dogs. This is the policy of Catholic churches, although it is possible that a Greek Orthodox church (such as the Church of the Holy Sepulchre) would not welcome the admittance of a dog.

In any case, in light of Rabbi Rabinowitz's assertion, serious thought should be devoted to the question of the extent to which a guide dog should be considered a "desecration of God's name" and to which it harms the "holy nature" of a site.

This issue was first raised by the Hatam Sofer in response to a question about using the site of an old synagogue as the courtyard of a new synagogue (*Orah Haim*, Chapter 31). The Hatam Sofer forbade this, and in addition to his response, he compared this practice to the prevalent custom of Christian houses of prayer to refrain from using sites that were once holy for secular purposes. The Hatam Sofer offered a new midrashic-halakhic interpretation of the verse "and you shall not profane My holy name that I may be sanctified in the midst of the Israelite people" (Leviticus 22:32) by stating that usually, the

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<sup>16</sup> Charlotte Gerber, "Are Guide Dogs Allowed in Mosques," on the About website: <http://disability.about.com/od/DisabilityFAQs/f/Are-Guide-Dogs-Allowed-In-Mosques.htm>

<sup>17</sup> A question on the Forum of Catholic Answers website, November 5, 2011, at <http://forums.catholic.com/showthread.php?t=613473>.

conclusion of the verse, “and I shall be sanctified in the midst of the Israelite people,” is understood as teaching that one should pray in a congregation in order to sanctify the name of Heaven (this is based on any equation of two words, as explained in the Babylonian Talmud, Megillah 23b). However, he feels that it would also be appropriate to connect the beginning of the verse, “and you shall not profane,” with the end, “that I may be sanctified,” since the verse is all one unit. Therefore, any synagogue in which God’s name is desecrated in the eyes of the nations of the world cannot possibly fulfill the directive of the final phrase “and I shall be sanctified in the midst of the Israelite people.” The significance of this ruling is that the cultural milieu in which we live has a real effect on halakhic rulings, even regarding the laws of the synagogue.

The Hatam Sofer’s ruling was accepted by many halakhic authorities. However, we must answer the following question: The United Nations signed a Convention on the Rights of People with Disabilities that includes a statement that the right of people with disabilities to independence is primary. If so, can a synagogue that opens its gates to people with guide dogs be considered to be treated with contempt? Or is the opposite true, and the nations of the world who signed the convention would consider this to be praiseworthy?

From the survey I conducted of religions comparable to Judaism in the Western world, the “desecration of God’s name” claim cannot be applied to the admittance of a guide dog to a synagogue or to the Western Wall.

- **Claim 3: The irregularity of the dog’s presence will disturb the services** – Rabbi Rabinowitz’s third claim is that the admission of a guide dog to the Western Wall plaza will cause a disturbance that will disrupt the prayers. This is, of course, a serious argument that depends on the worshippers themselves. If they view a dog—even if it is on a leash and sitting quietly next to its blind owner, who is praying—as something unusual that attracts attention, they will be unable to pray and the disturbance will be great. However, if the worshippers become accustomed to guide dogs, such that the dogs do not attract attention, this reality will become routine. A ruling regarding a similar matter has already been determined: The Mishna states that “a priest whose hands are blemished may not recite the priestly blessing” (Megillah 24b). It is explained that this is because the priests lift up their hands and people may stare at them. The Talmudic discussion there determines that “if he was familiar in his city, it is permitted.” This statement was accepted as a ruling in the *Shulhan Arukh* (*Orah Haim*, Chapter 128):

If he was familiar in his city—that is, that they were accustomed to him and everyone knows that he has this defect—he may recite the blessing, even if he is blind in both

eyes. Anyone who has resided in a city for thirty days is considered to be familiar.

An extensive body of rulings related to people becoming accustomed to changing circumstances in changing times exists in Halakhah. Obviously, one should not force a population to change, but in the public sphere of the State of Israel, where a law has been enacted to foster the integration of people with disabilities, it would certainly be appropriate to create an environment that supports the access of people with guide dogs.

- **Claim 4: There is no obligation to pray at the Western Wall** – The basis for Rabbi Feinstein’s ruling is that without a permissive ruling, the blind person will not enter the synagogue and will permanently be excluded from communal prayer, Torah reading, and other communal activities. According to Rabbi Rabinowitz, this claim does not apply at all with regard to the Western Wall:

For Rabbi Feinstein’s permission was based on the person’s exclusion from communal prayer service and Torah reading, etc. Obviously, this reasoning is inapplicable to the Western Wall, since the blind person has no obligation to pray there daily; he could easily go to another synagogue where his dog may enter with him, instead of going to a crowded, bustling place such as the Western Wall, where the dog’s presence may create a disturbance for a very large crowd of worshippers. And thus I was instructed by Rabbi Zalman Nehemia Goldberg, who told me that there is no commandment to pray specifically at the Western Wall, and thus the ruling of Rabbi Feinstein z”l should not be applied to this case and there is no “urgent need,” which served as a basis for Rabbi Feinstein’s ruling.

In order to bolster his claim, Rabbi Rabinowitz provides proof from the case of a woman who wished to pray at the Western Wall on Friday night but has difficulty walking. She asked whether she may stipulate during candle lighting that she is not yet taking on the laws of the Sabbath, so as to enable her to travel there (one way) after candle lighting, before sunset. Rabbi Yehoshua Neuwirth said in the name of Rabbi Shlomo Zalman Auerbach that driving to the Western Wall is not considered the type of need that justifies such a stipulation. (*Shemirat Shabbat Kehilkhata*, Chapter 43, section 137)

After examination of these claims, it seems to me that Rabbi Rabinowitz’s argument will not hold up due to the discrimination it creates against a person whose mobility depends on a guide dog. It is universally agreed that the Western Wall is “a public

space” and as such, it should be unconditionally accessible to every person with a disability. The basic, fundamental principle behind legislation regarding accessibility is the principle of inclusion. This principle sees people with disabilities as part of the community, such that they should be enabled to conduct themselves in the public sphere in the same manner as the rest of the public does, without any segregation.<sup>18</sup> Requiring a blind person to be separated from his or her dog is a direct violation of this principle. The only reservation found in the law, as mentioned earlier, is if separation is necessary because it is necessary in order to maintain the character or essence of the place. But to claim that this person is not obligated to pray at the Western Wall and as a result to bring about a situation in which it will never be accessible to that person, is obvious discrimination. The example of the woman lighting candles is irrelevant to this case, since for her, the Western Wall is accessible throughout the entire week; if this limiting directive is not changed, the Western Wall will remain off limits to the blind person all year round.

For all of the reasons above, Rabbi Rabinowitz concludes:

A place should be found where he can store his dog and he should be accompanied to the prayer plaza so that he can pray close to the remnant of our holy Temple without having to use the dog.

The idea that a person be excluded from the Western Wall because of blindness is not acceptable under any circumstances. For in addition to its status as a place of prayer (like a synagogue), the eyes of the entire Jewish people—including those of people with visual impairments—turn to it.

## **Summary and Conclusion**

Now that we have extensively examined the halakhic sources dealing with the issue of guide dogs in synagogues, it seems that we can sum up by saying that even those who forbid the admission of guide dogs do not think that it is categorically prohibited, and it certainly does not carry the status of a Torah prohibition. The reality of a blind person walking with a guide dog has spread throughout our world in the past few decades, and has evolved from a rare, unusual reality into a normal and reasonable reality. Israel’s accepted, mainstream society has taken on the responsibility of including people with disabilities in general in society, and people with guide dogs in particular, as evidenced by the Knesset’s signing of the international covenant and its enactment of the disabilities legislation mentioned above. The situation of blind persons in generations past, when they were dependent on those around them, cannot

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<sup>18</sup> See “The Inclusion Principle,” published by the Accessibility Information Center, on the website of the Commission of Equal Rights for People with Disabilities in the Ministry of Justice, <http://index.justice.gov.il/Units/NetzivutShivyon/MercazHameidaLenegishut/Pages/default.aspx> [Hebrew].

be compared to the situation of those who are led by guide dogs today.<sup>19</sup> Thus it is clear that some of the quotes from sources written fifty, forty, or thirty years ago have become less relevant with the passage of time and changes in reality.<sup>20</sup>

However, one should not ignore a significant segment of the population that is extremely intimidated by the presence of four-legged animals. Whether this fear is psychological or cultural, consideration of the needs of people with disabilities must extend to all sorts of disabilities, and fear of dogs is no different than other disabilities.

I do not wish to include the Supreme Court's discussion of whether the Western Wall has the status of a synagogue or a place of historical identity for the Jewish people in this article. This fundamental discussion indicates the depth of the connection of the Jewish people—observant and non-observant alike—to the Western Wall.<sup>21</sup> For the purpose of our discussion, I will suffice with quoting the opinion of Chief Justice Meir Shamgar, who seeks to achieve a balance between different rights, and to define the level of tolerance required from both sides:

We have therefore emphasized on various occasions that citizens of a free society, whose principles include human dignity, are called to respect the personal, emotional feelings of the individual and his or her dignity as a human being. This should stem from tolerance and from an understanding that emotional-personal concerns and the manner in which they are expressed vary from person to person . . . because a free society minimizes the limits it sets on the choices made by the individual of his or her own accord and conducts itself with patience and tolerance, and even attempts to understand the other, even when the paths followed are not seen by the majority as acceptable or desirable.

However, it is important to remember that tolerance and patience are not norms with a one-way direction; they are all-encompassing and multi-directional. An enlightened society also respects the beliefs and opinions of people who cleave to such views with a degree of passion and identification that is not necessarily usual for ordinary people . . . Tolerance is not a catchphrase for accumulating rights, but a standard

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<sup>19</sup> Yosef Turkel, "Increasing Physical and Social Accessibility and Empowering It with the Aid of Animals," in *Accessibility of Israeli Society to People with Disabilities at the Start of the 21<sup>st</sup> Century* (above n. 3), 509–602.

<sup>20</sup> I discussed this with Prof. Avraham Steinberg, author of the *Encyclopedia of Jewish Medical Ethics* and author of the article regarding the status of the blind person in Halakhah (above n. 13). In both of these works, which were written some thirty years ago, he recommends tying up the guide dog outside the synagogue and having a person accompany the blind person inside. He thinks that this is a case which might be considered a "change of nature" and that it is necessary to renew the halakhic position in accordance with the demands of reality. This does not undermine the doubts raised by the authorities cited regarding the disturbance and distraction that the dog may create.

<sup>21</sup> HCJ 257/89 Anat Hoffman v. Officer of the Western Wall 48(2), 265.

for granting rights to others. At the end of the day, tolerance must be mutual. Aggressive shows of force derived at times from the customs of violent societies, from the west or the east, are unsuited to it.<sup>22</sup>

In my humble opinion, taking the physical conditions of the Western Wall plaza into account, a special lane should be created for people with guide dogs that will lead them directly into the prayer plaza. This lane, which will be marked clearly and prominently, will enable people who are afraid of dogs to choose one side of the plaza and will enable people with guide dogs to stand before the stones of the Western Wall and pour out their hearts to their Father in Heaven.

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<sup>22</sup> Ibid.

# Responsa

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The Israel Democracy Institute (IDI) is an independent, nonpartisan body located at the intersection between academia and politics. IDI engages in policy planning and the framing of proposed reforms in governance and public administration. Through its endeavors, IDI strives to bolster the institutions of Israel's developing democracy and to consolidate its values. IDI's in-depth research is accompanied by practical recommendations for improving the functioning of Israel's government and nurturing a long-term vision for a stable democratic regime adapted to the structure, values, and norms of Israeli society.

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Rabbi Dr. Benjamin Lau is a Research Fellow at IDI, where he heads the "Human Rights and Judaism in Action" project in collaboration with the Ruderman Foundation. Drawing on Jewish sources, the project seeks to inculcate respect for human rights in general, and for people with disabilities in particular, in the Israeli government and throughout the public sphere.

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